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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

LARRY D. WALLS,
Petitioner,

vs.

COUNTY OF LOS ANGELES,
OFFICE OF THE DISTRICT ATTORNEY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION SEVEN

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I
JURISDICTION

The respondent County of Los Angeles, Office of the District Attorney ("DA") contests this Court's jurisdiction under 28 U.S.C. §1254(1). The underlying administrative decision clearly uses local and not federal law. The petitioner, Larry D. Walls (sometimes "WALLS") confuses the difference between local adoption of a federal rule of law in interpreting a state statute with the instance of a legal decision being *based upon* federal law. There is a difference.

This case involves two issues before the Los Angeles County Civil Service Commission ("Commission"). The first issue WALLS raised was promotability score, in his application for the position of Deputy District Attorney IV ("DDA IV"). WALLS was one of approximately 130 other applicants. WALLS complained that he received a score of "80." He wanted a "100." The second issue was WALLS' claim of discrimination for his lateral reassignment from the DA's Compton Hard Core Gang Unit to other duties.

Contrary to WALLS' petition, in the first issue involving his Appraisal of Promotability ("AP") score, discrimination was not the issue before the Commission. The sole issue was whether a preponderance of evidence supported WALLS' claim to a higher AP score. *App.1.*[1] Racial discrimination was *never* an issue recognized by the Commission.

---

[1] The Petition for Certiorari is cited as "Pet. ___." The Appendices to the Petition are cited as "Pet.App. ___." The Appendix to this Brief in Opposition is cited as "App. ___." The Clerk's Transcript for the state court proceeding will be cited as "CT," followed by page number.

WALLS' only remotely colorable claim to federal jurisdiction is his assertion relating to his lateral reassignment. Specifically, WALLS claims his reassignment to different duties was based upon racial animus in violation of Los Angeles County Civil Service Rule 25.01.

However, even this latter issue is without federal significance. The administrative proceeding arose under a local ordinance, specifically Civil Service Rule, Rule 25.01. In fact, this case represents nothing more than a local administrative decision relating to WALLS' job assignment, which will be addressed in the following sections.

A Rule 25.01 Is a Local Discretionary Statute Which Does Not Grant a Hearing as a Matter of Right

Employment issues such as promotability scores and transfers fall well below federal jurisdictional interests. Under its administrative rules the Commission may, but is not required, to review claims of alleged racial or "non merit" discrimination by employees. Under Civil Service Rule 4.03(B), the Commission is required to grant administrative hearings in those instances relating to discharges, reductions, and suspensions exceeding five days. *Civil Service Rule 4.03(A)*. According to Rule 4.03(B), the Commission is not required to grant hearings for cases "provided in Rule 4.01"; this includes claims of discrimination under Civil Service Rule 25.01. *Civil Service Rule 4.01(A), 4.03(B)*.

Thus, the Civil Service Rules do not grant employees a Rule 25.01 hearing as a "right," but only in the Commission's discretion. The question is contingent, provisional, and local; *not* designed as a remedy as "of right" in the sense of an action under Title VII of the Civil Rights Act of 1964, or even under California's parallel civil rights

statute, the Fair Employment and Housing Act. *See Cal. Gov. Code §12940 et seq.*

This removes the rationale for extending federal jurisdiction in this case. While the courts have voluntarily adopted federal Title VII "burden shifting" procedural standards in interpreting Rule 25.01 administrative matters, the issues *inherently* involves local law. Given the highly discretionary nature of a Rule 25.01 administrative proceeding, there is no basis to extend federal power into an area which is not even designed as a remedy of right to allegedly aggrieved employees.

B The State Decision Was Based upon Local Law

Michigan v. Long, 463 U.S. 1032 (1983) provides that this Court's jurisdiction extends only to state decisions lacking an independent and adequate state ground. 463 U.S. at 1038. However, Civil Service Rule 25.01 merely incorporates federal Title VII burden shifting standards; the fact that a state court voluntarily adopts the logic of a body of federal law in interpreting a local ordinance does not transform the ordinance into a federal statute. WALLS' petition confuses the concepts of local incorporation of federal standards with those decisions intermingling federal and state law.

Thus, federal Title VII "burden shifting" standards are only adopted as a rule in interpreting Rule 25.01 administrative claims. Just because a state statute uses federal standards as a "measure of rights granted by the state does not make the determination of such rights a federal question." *Miller v. Anderson*, 150 U.S. 132, 136-37 (1893). There is no federal jurisdiction in this case.

II
APPLICABLE CIVIL SERVICE RULES

A Civil Service Rule 25.01

The Respondent disagrees that Title VII of the Civil Rights Act of 1964, *42 U.S.C. §§1981-83*, has any direct applicability in this proceeding. Moreover, the full text of Civil Service Rule 25.01 was not set forth in the petition; full citation is significant because of the differences between Rule 25.01 and the federal law cited in the petition. Civil Service Rule 25.01(A) provides as follows:

> **Rule 25.01 Employment Practices.** A. No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against in employment or opportunity for employment because of race, color, religion, sex, physical handicap, medical condition, marital status, age, national origin or citizenship, ancestry, political opinions or affiliations, organizational membership or affiliation, or other non-merit factors, any of which are not substantially related to successful performance of the duties of the position. Any person who appeals alleging discrimination based on a non-merit factor must name the specific non-merit factor(s) on which discrimination is alleged to be based. No hearing shall be granted nor evidence hard relative to discrimination based on unspecified non-merit factors.
>
> *Civil Service Rule 25.01(A).*

B Civil Service Rule 4.12

In proceedings before the Commission, the burden of proof was upon WALLS. Civil Service Rule 4.12 provides:

> **Rule 4.12. Burden of proof.** In hearings on discharges, reductions or suspensions in excess of five days, the burden of proof shall be on the appointing power, except that the burden of proving affirmative defenses shall be on the person asserting them; provided that such raising of an affirmative defense does not relieve the appointing authority of its responsibility to sustain its burden of proof. In all other types of hearings the burden of proof shall be on the petitioner.

C Civil Service Rules 4.01 and 4.03

Two Civil Service Rules are significant to interpret the Commission's standards in allowing a hearing for Rule 25.01 administrative claims. Civil Service Rule 4.01(A) identifies the standard for a Civil Service appellant in seeking administrative relief. When read together with Rule 4.01(A), Rule 4.03(A)-(B) allows the Commission *discretion* to grant a hearing for Rule 25.01 "non merit factor" claims. Those rules provide:

> **Rule 4.01 Right to petition for a hearing.** Any employee or applicant for employment may petition for a hearing before the commission who is:
>
> *A. Adversely affected by any action or decision of the director of personnel*

concerning which discrimination is alleged as provided in Rule 25;

B. Adversely affected by any action or decision of the commission made without notice to and opportunity for such person to be heard other than a commission decision denying a petition for hearing;

C. Otherwise entitled to a hearing under the Charter or these Rules.

[Emphasis added]

Rule 4.03 Action on petition for hearing.

A. In cases of discharge or reduction of a permanent employee other than a probationary employee covered by the provisions of Rule 18, or suspension in excess of five days, a timely petition for hearing shall be granted if it states sufficient specific facts and reasons in support of the employee's appeal as provided in Rule 18.02. The petition shall be denied if such facts and reasons are not stated

B. *In all other cases provided for in Rule 4.01, the commission may, at its discretion, grant a hearing or make its decision on the merits based on a review of written materials submitted by the parties concerned.* The commission shall deny both a request for a hearing and a review of written materials if the petition fails to state sufficient specific facts and reasons, or if, in the opinion of the

> commission, the specific facts and reasons stated, if true, would not entitle the petitioner to any relief. Moreover, no hearing need be granted if the commission is of the opinion, based on the moving papers and any responses thereto, that the petitioner is not likely to prevail on the merits of the petition. No amended petition shall be considered if it is not filed within 10 business days of the date of denial of the original petition. No more than one amended petition may be filed by the petitioner.
>
> [Emphasis added]

III
STATEMENT OF THE CASE

The statement of the case in the petition is inaccurate, failing to detail the actual evidence at the underlying administrative hearing. WALLS' mischaracterization of the record has been habitual throughout these proceedings. *See, e.g., Pet.App.* 19, n.7; 24, n.9. The DA submits that the decision of the California Court of Appeal represents an accurate description of the proceedings before the Commission. *Pet. App.* 2-25. However, the DA presents the following as additions and corrections to the statement of the case offered in the Petition:

1. Contrary to WALLS' claim, the evidence that his supervisor, Mr. Markus, allegedly used the word "nigger" as an insult in September 1989 was disputed during the civil service hearing. Supervisor Markus claimed the comment was made and originally perceived as a joke. *CT* at 2706. Whatever was said, Mr. Markus was ultimately reprimanded

by the DA for any purported statement. *Pet.App.*6.

2. Petitioner claims the alleged lack of Performance Evaluations ("PEs") affected his promotability. However, uncontroverted evidence demonstrated that the alleged absence of PEs did not affect his AP rating. *CT* at 2641.

3. The Petitioner suggests that supervisor Markus was not given a lower AP by the DA because of the loud August 1990 dispute with the Petitioner. Mr. Markus was also a co-applicant for the DDA IV position. However, the dispute occurred outside of the AP rating period, which was June 30, 1989 to June 29, 1990. *CT* at 2586. Moreover, Mr. Markus *was* reprimanded for the dispute. *Pet.App.* 9.

4. All APs, including that of WALLS, was prepared in final form by a Committee. This was done to even out differences between various supervisory raters, and to arrive at a scale of relative strengths and weaknesses. *CT* at 2588.

5. WALLS' AP score was in fact increased by the AP Committee. The AP Committee raised some scores to promote minority candidates. *Pet. App.* 18 (Opinion of the California Court of Appeal).

6. Mr. Markus neither participated in nor provided input in WALLS' AP. *CT* at 2358-59; *see also Pet.App.* 9-10 (California Court of Appeal decision).

7. The applicants for the relevant position of Deputy District Attorney Grade IV included Deputy District Attorney Greta Walker, an African American. Ms. Walker received an AP score of 100. *Pet.App.* 7, 11.

8. WALLS' evaluators perceived him as being deficient in many areas of performance, including his failure to recognize ethical issues arising out of his prosecution of the *Vargas* murder case. *CT* at 2609, 2613, 2615. The Hearing Officer originally receiving evidence characterized the Petitioner's failure to understand the ethical problems as a "strong deficiency" in the Work Ethics factor of the Petitioner's AP score. *Pet.App.* 19; *CT* at 2620.

9. While the Petitioner correctly stated that he was not criticized for his handling of the *Vargas* case [*Pet.* 7], he missed the point: the Petitioner was criticized for his reaction to the DA's decision not to oppose Vargas' motion to vacate his conviction and for new trial. *Pet.App.* 10. It was his failure to perceive significant ethical issues which concerned the DA.

10. The Petitioner asserts that his transfer was ordered by his supervisor, Mr. Markus. *Pet. 11.* However, the Petitioner testified at hearing that he did not know who ordered his reassignment. *CT* at 2141. Mr. Genelin, Head Deputy District Attorney, testified that he personally decided to transfer the Petitioner, stating that the Petitioner was not "cutting it." *CT* at 2446. *Mr. Genelin* ordered the transfer even before the Petitioner first disclosed to the DA the bantering incident with Mr. Markus. *CT* at 2446. Thus, the DA was unaware of any alleged racial statement by Mr. Markus at the time of the transfer and the disputed AP score. *Pet. App.* 22 (conclusion of California Court of Appeal).

11. The Petitioner failed to mention the legitimate and non-discriminatory business reasons proffered by the DA for his reassignment from the Compton Hard Core Gang unit; including:

(a) The DA only assigns deputies in special prosecution units for two or three years, and the Petitioner had at the time been in the unit for two and one-half years. *CT* at 2633; *Pet.App.* 22 (Opinion of the California Court of Appeal).

(b) WALLS mishandled the *People v. Russell* case, a murder case, which resulted in a dismissal through his failure to serve subpoenas. *Pet.App.* 22. Moreover, the Petitioner's antagonistic reaction to being questioned about the *Russell* dismissal by his superiors was an element in the DA's decision to reassign him to another unit. *CT* at 2947-49. The Court of Appeal concluded that rather than offer evidence "showing this reason was a mere pretext for discrimination, WALLS merely insinuated racist motives for the transfer." *Pet.App.* 22.

12. WALLS failed to mention the legitimate and non-discriminatory business reasons proffered by the DA for giving him an AP score of "80." Those additional reasons include:

(a) While WALLS had a good "common sense" approach to cases, he had difficulty evaluating complex legal theories. *CT* at 2695-97. He was sometimes seen in the office working on personal matters. *CT* at 2238-39.

(b) WALLS was perceived by his superiors as "cherry picking" those cases he wished to prosecute [*CT* at 2418-19]; he was seen as "backing off" trying cases.

(c) WALLS was the most difficult attorney in the office regarding accepting suggestions or criticism. *CT* at 2625. The DA lowered his caseload, because of the Petitioner's difficulty in dealing with stress. *CT* at 826.

REASONS FOR DENYING THE WRIT

I
THE PETITIONER INACCURATELY STATES THAT HE IS NOT REQUIRED TO DEMONSTRATE A LINK BETWEEN THE CLAIMED ACT OF DISCRIMINATION AND RACIAL ANIMUS BY HIS EMPLOYER, THE DA

The Petitioner inaccurately characterizes the state of *both* federal and California law, relating to claims of racial discrimination. WALLS suggests that California imposes an "additional" standard, requiring him to show a causal connection between the employer's act, and prohibited discrimination. *Pet.* 14-15. The DA interprets this thusly: WALLS is complaining that he is required to demonstrate that the act of discrimination is a *result* of racial animus. What this means is uncertain, particularly in light of this Court's numerous statements imposing this very requirement upon plaintiffs. *See, e.g., St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 523-24 (1993).

The California Court of Appeal in fact affirmed that WALLS failed to demonstrate this link. The DA presented evidence at the hearing constituting legitimate business reasons never proven by WALLS to be pretextual. WALLS' problem is simple: he never demonstrated any pretext for the entirely proper business decisions of the DA. The problem was never that improper standards were used by the Court of Appeal; WALLS' problem has always been a simple failure of proof.

II
THE COURT OF APPEAL USED THE LEGAL STANDARD OF "SUBSTANTIAL EVIDENCE" IN EVALUATING THE "WHOLE RECORD," CONSTITUTING THE COMMISSION'S DECISION, AND FOUND NO EVIDENCE OF DISCRIMINATION

WALLS' petition suggests that the California Court of Appeal was "result oriented" in its approach and "tone." *See, e.g., App.* at 17. However, while the California Court of Appeal used the standard most beneficial to WALLS, it nevertheless found in the DA's favor. The California courts utilized the "substantial evidence" standard in reviewing the Commission decision.

It is well settled California law that the standard for reviewing the Commission's decision in this instance is whether the substantial evidence supports the decision. *County of Los Angeles Department of Parks and Recreation v. Civil Service Commission (Castaneda)*, 8 Cal.App.4th 273, 10 Cal.Rptr.2d 150 (1992). The substantial evidence test requires that the evidence be of "ponderable legal significance . . . reasonable in nature, credible and of solid value . . . [and as] relevant evidence that a reasonable mind might accept as adequate to support a conclusion." [Citations and quotations omitted] *County of San Diego v. Assessment Appeals Board No. 2*, 148 Cal.App.3d 548, 555, 195 Cal.Rptr. 895 (1983).

In this case, the California Court of Appeal viewed the "whole record," and concluded that the Commission failed to properly evaluate the evidence as it was required to do. Under California procedural law, the Commission's written decision must set forth findings which "bridge the analytic gap between the raw evidence and ultimate decision or order." *Topanga Association for a Scenic Community v. County of*

Los Angeles, 11 Cal.3d 506, 515 (1974). In this case, the Commission's decision failed to do this, meriting reversal.

WALLS' true complaint is that he does not like the mechanism established by the California Legislature to review administrative decisions, specifically California Code of Civil Procedure §1094.5, and cases interpreting that section. WALLS wants this Court to "correct" the conclusion of the alleged trier of fact, the Commission.[2] However, in California the *courts* have the final word in administrative proceedings. There is no basis for this Court to grant the petition in this case.

---

[2] WALLS engages in an interesting distortion when asking this Court to uphold the "fact finders." *Pet.* 20. The actual fact finder, the Hearing Officer, concluded that the DA *did not discriminate* in WALLS' reassignment from the Compton Hardcore Gang Unit. *Pet.App.* 14-15. While the Hearing Officer raised WALLS' AP to a "90," he did not find racial discrimination. Instead, he raised WALLS' score because he disliked the alleged disparity between Mr. Markus' score, and that of WALLS. *Pet.App.* 15-16. Later, without explanation, the Commission reversed its Hearing Officer, sustaining both administrative appeals.

III
CONCLUSION

Based on the foregoing, the DA requests that the petition be summarily denied.

Dated: March 2, 1998.

Respectfully submitted,

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APPENDIX

[SEAL OMITTED]

CIVIL SERVICE COMMISSION
COUNTY OF LOS ANGELES

Room 522 Hall of Administration, 222 N. Grand Avenue,
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Commissioners:
N. Keith Abbott
Moises R. Luna
George S. Nojima
Wade A. Piston
Tom Salata

May 14, 1991

SPECIAL NOTICE
IN THE MATTER OF LARRY D. WALLS

Civil Service Rule 4 requires the parties to confer and attempt to prepare a written statement setting forth the specific facts or contentions in issue. These facts or contentions must fall within the scope of the hearing as defined by the Commission. The party having the burden of proof shall contact the other party and schedule a conference to be held at least ten business days prior to the hearing. The written statement must be filed with the Commission no later than five business days prior to the hearing. It must include an estimate of the time required for the hearing and a list of all witnesses intended to be called by each party.

If the parties fail to reach agreement on the facts or contentions, each party must file a written statement. The Hearing Officer shall resolve all disputes and announce the resolution as the first item of business in the hearing.

If either party does not participate in the preparation of the statement, the Hearing Officer shall accept the statement of

the other party as to the facts and contentions in issue to the extent the statement conforms to the scope defined by the Commission.

On May 8, 1991, the Commission defined the issues in this matter as:

1. Was the Appellant properly rated on the A.P. score received in the examination for Deputy District Attorney IV?

2. If #1 is not true, what is the appropriate remedy?

/s/ Emi Yamasaki
EMI YAMASAKI, Assistant Executive Officer

cc: Larry D. Walls
William D. Ruffin
David Dahle
Leonard S. Kimmell